

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-109581-15

Date:

September 11, 2015

LEGEND

Taxpayer =

State A =

State B =

Year 1 =

a =

b =

c =

Dear :

This letter responds to a March 12, 2015 letter requesting rulings under §§ 301 and 305. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted on behalf of the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer is a State A corporation that is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return on a calendar year basis.

Taxpayer has two classes of common stock outstanding, Class A and Class B (hereafter, the “Class A Shares” and the “Class B Shares,” and collectively, the “Common Stock”).

Taxpayer also has a tranches of outstanding convertible debt (collectively, the “Convertible Debt”). Each tranche is convertible into Class A Shares at a conversion ratio and on the terms and conditions specified in the respective indenture agreement (each an “Indenture”). The Indenture for each tranche of Convertible Debt provides for an adjustment to the conversion ratio in the event that Taxpayer makes a distribution (such as the distributions described herein) to its shareholders.

Taxpayer intends to make an election to be treated as a real estate investment trust (“REIT”) pursuant to § 856(c)(1), effective on the first day of Year 1. In connection with the REIT election, prior to the end of Year 1, Taxpayer intends to distribute to its shareholders with respect to their stock, all of its earnings and profits that were, or will be, accumulated by Taxpayer for all taxable periods ending prior to Year 1 (the “C Corp E&P”), as required by § 857(a)(2)(B). The distribution of the C Corp E&P will be made in one or more distributions. Taxpayer expects to make the first distribution of its C Corp E&P prior to Year 1. Taxpayer will make any additional distributions of the remainder of its C Corp E&P prior to the last day of Year 1. Prior to its first C Corp E&P distribution, Taxpayer will relocate its jurisdiction of ownership from State A to State B by undertaking certain steps that it represents will constitute a tax-free reorganization under § 368(a)(1)(F). References herein to “Taxpayer” include any successor in such reorganization.

Taxpayer will make the C Corp E&P distributions in the form of a combination of cash and Common Stock. Each shareholder will have the right to elect (the “Election”), subject to the pro ration described below, to receive its portion of a distribution in the form of either all cash or all Common Stock. If a holder of Class A Shares (a “Class A Shareholder”) elects to receive stock, the Class A Shareholder will receive additional Class A Shares. If a holder of Class B Shares (a “Class B Shareholder”) elects to receive stock, the Class B Shareholder will receive additional Class B Shares. If a shareholder fails to make a valid election, that shareholder will be deemed to have made an election to receive its portion of the distribution in the form of all cash.

While each Class A Shareholder and Class B Shareholder will have the option to elect to receive cash in lieu of Common Stock for its respective portion of a distribution,

in no event will the total amount of cash available in a distribution (the “Cash Amount”) be less than b% of the aggregate amount of a distribution (the “Maximum Cash Distribution”).

If, for a distribution, the total number of shares of Common Stock for which an election to receive cash is made would result in the payment of cash in an aggregate amount that is less than or equal to the Cash Amount, then each shareholder electing to receive cash will receive its portion of the distribution entirely in cash. If the total number of shares of Common Stock for which an election to receive cash is made would result in the payment of cash in an aggregate amount that is in excess of the Cash Amount, then each shareholder electing to receive cash will receive a prorated amount of cash and will receive the remainder of its portion of that distribution in Common Stock. The cash proration will be made among shares for which a cash election is made based upon the total number of shares without differentiating between Class A Shares and Class B Shares. Once the cash proration is made, the remaining portion of that distribution will be paid on Class A Shares with additional Class A Shares, and on Class B Shares with additional Class B Shares. Accordingly, no shareholder electing to receive cash will receive less than b% of its portion of the distribution in cash.

The calculation of the number of Class A Shares to be received by the Class A shareholders (“Class A Shareholders”), and the number of Class B Shares to be received by the Class B shareholders (“Class B Shareholders”), will be determined over a period of c business days ending as close as practicable to the distribution payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could have been received instead.

RULINGS

Based solely on the information and representations submitted, we rule as follows:

(1) Any and all cash and Class A Shares distributed in a distribution by Taxpayer to the Class A Shareholders pursuant to the Election will be treated as a distribution of property with respect to the Class A Shares to which § 301 applies (§§ 301 and 305(b)(1)). Any and all cash and Class B Shares distributed in a distribution by Taxpayer to the Class B Shareholders pursuant to the Election will be treated as a distribution of property with respect to the Class B Shares to which § 301 applies (§§ 301 and 305(b)(1)).

(2) The amount of the distribution of the Class A Shares received by a Class A Shareholder electing to receive stock will be considered to equal the amount of money that such shareholder could have received instead (§ 1.305-1(b)(2)). The amount of the distribution of the Class B Shares received by a Class B Shareholder electing to receive

stock will be considered to equal the amount of money that such shareholder could have received instead (§ 1.305-1(b)(2)).

(3) Provided that, pursuant to the Election, Taxpayer distributes cash to Class A Shareholders or Class B Shareholders in a distribution, then any adjustments to the conversion ratios of the Convertible Debt required as a result of the distribution shall constitute deemed distributions, to which § 301 applies by reason of §§ 305(b)(2) and (c), to the holders of the Convertible Debt.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax treatment of any aspect of any transaction or item discussed or referenced in this letter. Moreover, no opinion is expressed as to whether Taxpayer will qualify as a REIT under subchapter M, part II of Chapter 1 of the Code. Furthermore, no opinion is expressed as to whether any distribution will satisfy the distribution requirements of § 857(a)(1). Finally, no opinion is expressed as to whether any distribution will be considered preferential under § 562(c).

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Isaac W. Zimbalist
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)